

Missouri Essay Question 1
February 2003 Bar Examination
Administrative Law

Joe owns an autobody repair shop in Jefferson City, Missouri. On January 1, 2002, his shop was hit by a truck. The collision caused substantial damage to one wall of the building. Joe boarded up broken windows but made no other repairs to the wall of his building.

The City of Jefferson City, Missouri has a duly adopted Property Maintenance Code (PMC). The PMC is administered by the Neighborhood and Community Services Department (NCS). After receiving complaints, the NCS inspected Joe's building. After an inspection, the NCS issued an Order of Demolition for Joe's building, concluding the building was a "dangerous building" as defined in the PMC.

As required by NCS rules, Joe timely requested a hearing before the Property Maintenance Appeals Board (Board) and asked the Board to review the Order of Demolition. Joe denied that his building is a "dangerous building" as defined in the PMC. He also argued the PMC requires a property owner be provided a reasonable opportunity to repair a building determined to be "dangerous" before an Order of Demolition is issued.

After an evidentiary hearing, the Board made a factual finding that Joe's building is a "dangerous building" as defined in the PMC. The Board further found the PMC does not require a property owner be given a reasonable opportunity to repair a building determined to be "dangerous" before an Order of Demolition is issued.

Joe filed a Petition for Review in the Circuit Court of Cole County, Missouri. Based on the record of the hearing conducted before the Board, and on the legal briefs filed by the parties, the Circuit Court affirmed the Board's decision.

Joe filed a timely appeal to the Missouri Court of Appeals. On appeal, Joe raised three issues: (a) whether his building is a "dangerous building" as defined in the PMC, (b) whether the PMC requires a property owner be given a reasonable opportunity to

repair a building determined to be “dangerous” before an Order of Demolition is issued, and (c) whether the Order of Demolition constitutes an unconstitutional “taking” of Joe’s property. Please respond to the following questions:

1. On appeal, is the Missouri Court of Appeals reviewing (a) the decision of the Board or (b) the decision of the Circuit Court of Cole County, Missouri? Explain.
2. What is the applicable scope of judicial review to be applied by the Missouri Court of Appeals in reviewing whether Joe’s building is a “dangerous building” as defined in the PMC? Explain.
3. What is the applicable scope of judicial review to be applied by the Missouri Court of Appeals in reviewing whether the PMC requires a property owner be given a reasonable opportunity to repair a building determined to be “dangerous” before an Order of Demolition is issued? Explain.
4. Joe first raised the argument that the Order of Demolition constitutes an unconstitutional “taking” of his property in his appeal to the Missouri Court of Appeals. Will the Missouri Court of Appeals reach the merits of Joe’s constitutional argument? Explain. (Do not discuss the merits of Joe’s constitutional argument.)
5. Assume for this question only that Joe filed his Petition for Review in the Circuit Court of Cole County, Missouri immediately after the NCS issued its Order of Demolition and that Joe did not request a hearing before the Property Maintenance Appeals Board. Does the Circuit Court of Cole County, Missouri have subject matter jurisdiction to hear the Petition for Review? Explain.

Missouri Essay Question 2
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Estates

An outline of the family relationships described below is set out as Exhibit “A” on page 4.

Jim Jones died January 31, 2003, a resident of Blue County, Missouri. At the time of his death, Jim was 83 years of age and a confirmed bachelor. Jim’s father, **Joe Jones**, had been married to two different women. Joe’s first wife was Jim’s mother, **Alice**, who died during Jim’s birth. Jim had one older sibling, **Kathryn**, born to Joe and Alice. Joe subsequently met and married **Betty**. To this marriage, two children, **Lawrence** and **Mary**, were born. Betty also had one child by a prior marriage, **Nancy**. Betty died soon after the birth of Mary, leaving Joe with Jim, Kathryn, Lawrence and Mary to raise. Nancy was sent to the home of her aunt to live.

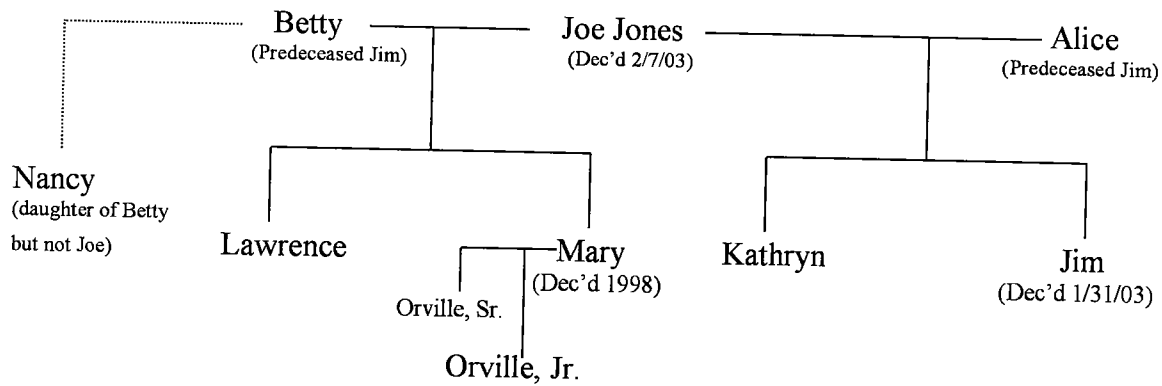
At the time of Jim’s death, his father Joe, age 102, was still living. However, Joe died a week after Jim. Kathryn and Lawrence also survived Jim. However, Mary had died in 1998 leaving her husband, **Orville**, and one child, **Orville, Jr.**, surviving her, both of whom also survived Jim.

Jim, having no children to educate, has amassed a sizeable estate consisting of a large crop farm in the State of Iowa with a fair market value of \$300,000, a personal residence valued at \$100,000 in Blue County, Missouri, certificates of deposit in the State Bank of Iowa in the amount of \$100,000, certificates of deposit in the State Bank of Missouri in the amount of \$100,000, an investment account with Mergin-Steinway-Dan-Twitter of New York through its Blue County, Missouri office in the amount of \$1,000,000. Jim fully intended to write a Will but just never got around to it, thinking that, like his father, he would surely live to be over 100 years of age. All assets were solely in Jim’s name.

1. Who is eligible to apply to be the Personal Representative of Jim’s estate? Why?
2. To whom and how will Jim’s estate be distributed under the laws of the State of Missouri? Your answer should discuss the rights, if any, of Joe, Kathryn, Lawrence, Nancy, Orville, Sr. and Orville, Jr.

3. What law will govern the distribution of Jim's Iowa farm? What jurisdiction, if any, does the Blue County, Missouri Probate Division have over the Iowa Farm?
4. Assume that the United States Internal Revenue Code as in effect in the year 2003 imposes an estate tax on the estate of all decedents whose gross estate exceeds the sum of \$1,000,000. Without attempting to make any tax calculations, discuss whether the estate tax that is due will or will not be equitably apportioned to the beneficiaries of the estate, and why.
5. If Joe (Jim's father) is a beneficiary of Jim's estate, what will happen to his share in light of his death a week after that of Jim?

Exhibit "A"



Missouri Essay Question 3
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Missouri Civil Procedure

A. Acme Company, a distributor of lawn-care products with its headquarters in St. Louis, is looking for a new supplier of its Acme Hedge Trimmer. Acme contacts the Clipper Company, a manufacturer of hedge trimmers located in Ohio. After several preliminary discussions by telephone and e-mail, representatives of Acme and Clipper meet in St. Louis to negotiate a contract pursuant to which Clipper would design and manufacture a hedge trimmer to be marketed by Acme under Acme's name. Based on these negotiations, Acme prepares a written contract and sends it to Clipper's headquarters in Ohio. Clipper signs the contract and sends it back to St. Louis, where it is signed by an authorized representative of Acme.

Over the next two years, Clipper is repeatedly behind schedule in manufacturing the trimmers, and the trimmers that it manufactures frequently malfunction. Frustrated by Clipper's failure to perform its obligations, Acme files a lawsuit for breach of contract against Clipper in the Circuit Court of the City of St. Louis.

1. Clipper has no office or agents in Missouri. How may Acme serve the summons and petition on Clipper? By what statutory authority may it effect that service? (Not asking for the statute number).

2. After Clipper is served, it files a motion to dismiss for lack of personal jurisdiction. How should the court decide that motion? Explain.

3. If Clipper files an answer to Acme's petition prior to filing its motion to dismiss, would that effect the court's ruling on the motion to dismiss? Explain.

B. Mr. Wilson, a Missouri resident, is injured using a trimmer that he claims was distributed by Acme and manufactured by Clipper. Wilson brings a personal injury lawsuit against Acme in the Circuit Court of the City of St. Louis alleging strict liability and negligence.

1. By what procedure and on what legal theory may Acme add Clipper as a party in the Wilson lawsuit?

C. During the trial of Wilson's claim against Acme, Acme unsuccessfully contends that there is no evidence that the hedge trimmer Wilson was using was distributed by Acme. Acme also seeks to introduce evidence that Wilson was extremely intoxicated at the time that he was using the trimmer. The trial court excludes the evidence. After the jury returns a verdict against Acme, Acme decides to appeal the judgment.

1. What action must Acme have taken during trial to preserve for appellate review its argument (a) that Wilson failed to prove all the elements of his claim against Acme, and (b) that the court should have admitted the evidence of Wilson's intoxication?

2. After the trial is concluded, what action must Acme take in the circuit court to preserve those two issues for appellate review?

Missouri Essay Question 4
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Remedies

Arthur Collector owns a painting by Vincent Van Gogh, "Starry Bootheel Night," painted during the artist's one visit to Missouri. Van Gogh's works are extremely rare and very valuable, and only a few are privately owned. Brenda Buyer has been acquainted with Collector for many years and has long attempted to persuade Collector to sell her the painting. One day, Buyer and Collector finally come to an agreement about the sale of the painting. Buyer will pay Collector \$1 Million, of which 10% (\$100,000.00) is to be paid at the time the parties execute a buy-sell agreement. The balance of the purchase price is due upon delivery of the painting.

- (A) Assume the following: Buyer and Collector execute a buy-sell agreement and Buyer pays to Collector 10% of the total purchase price. The following day, a third party calls Collector and offers him \$2 Million for the painting. Collector immediately returns Buyer's money to Buyer and tells her he has changed his mind. Can Buyer force Collector to go forward with the sale of the painting to her? Discuss why or why not. If she can, what is the equitable mechanism for doing so?
- (B) Disregard the facts given to you in sub-part "A" and assume the following: Buyer and Collector execute a buy-sell agreement and Buyer pays to Collector 10% of the total purchase price. Buyer thereupon has the painting examined by a team of art experts, and it is discovered that the painting is not a genuine Van Gogh. Neither Collector nor Buyer knew that the painting was not authentic. Collector, however, insists that "it looks like a Van Gogh," that Buyer "always loved it," and that Buyer should proceed with payment of the balance of the contract price. Buyer, of course, no longer wants the painting. May Buyer avoid her contract with Collector? Discuss why or why not. If she can, what is the equitable mechanism for doing so?

- (C) Disregard the facts given to you in sub-parts “A” and “B” and assume the following: Collector’s attorney prepares the buy-sell agreement, but misstates the total purchase price as \$500,000.00. Buyer and Collector sign the agreement. Buyer notices the error at the time she signs the agreement, but she does not advise Collector of it. Buyer pays Collector \$100,000.00. Thereafter, Buyer tenders to Collector \$400,000.00 as the “agreed upon” balance, and demands that he deliver the painting to her. Can Collector insist upon the original purchase price for the painting? Discuss why or why not. If he can, what is the equitable mechanism for doing so?